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SUBJECT: JORDAN IPR UPDATE: MIXED OUTLOOK

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SUMMARY

1. (SBU) Jordan's record on enforcement of IPR laws has been improving steadily over the past six months. However, greater awareness of the impact of lax IPR enforcement on Jordanian industries as well as further reform of existing IPR legislation and prosecution is still needed if Jordan is to fulfill all of its obligations under the WTO and the Jordan-U.S. FTA. Courses like the proposed USPTO conference on specialized IP courts help in this regard. End Summary.

ENFORCEMENT

2. (SBU) The Director of the National Library (the government entity charged with copyright registration and IPR enforcement), Ma'moun Talhouni, has been a much more effective enforcer of Jordan's IPR legislation than his predecessors. Since his appointment on July 22, 2001, the number of raids on illegal audio-visual outlets has increased to more than a thousand, and the number of cases brought by the National Library to the district attorney between July 23, 2001 and August, 2002 totaled 350 cases, with about 125 of these in July. This compares to 38 cases filed between July 2000 and July 2001 and 6 cases the year before. If one such outlet gets raided twice in a row and is found harboring pirated materials, then in addition to the fine, licensees are invited to file a civil suit against it. Talhouni told us that a good percentage of the patent/trademark/copyright infringement cases referred to the courts for prosecution receive sentences.

3. (U) Talhouni told econchief he thought fines and jail time could be harsher so as to be more effective deterrents. Still, the substantial increase in the number of raids and the number of cases brought in front of the courts has made life harder for vendors of pirated goods. As the hassle of being raided and then going through the legal process bears fruit, some shopkeepers are even starting to report the names of other offenders with whom they compete.

4. (SBU) In order to take stock of the quantity and quality of these sentences, the National Library has sent out a survey to the judges of the courts of first instance. The survey inquires about the number of IPR cases, the percentage that receive sentences, their quality and severity, and problems with each case. The survey also aims to evaluate ways the National Library can help improve its presentation of each case and close any legal loopholes so that it can ensure logical and deterrent sentences. Since most raids are still conducted without police support, some irregularities take place and render the ensuing cases vulnerable to legal questioning. Better coordination with the police department is needed in this respect.

5. (U) According to IPR watchers, however, many National Library cases have failed in courts because library officials did not follow proper law enforcement procedures, and because with little manpower (just six officers), National Library staff have no time to testify in courts themselves. Under the law, the burden of the proof lies on the prosecutor to prove intent. Many defendants take advantage of this by claiming ignorance of the law and of any wrongdoing to escape prosecution. Defense attorneys are also using the latter and are becoming better at finding loopholes in the law and in the

legal procedures used by the enforcement officials to get their clients off the hook.

¶6. (U) Furthermore, Talhouni complains that rights-holders or other parties whose interests are harmed by piracy are not being sufficiently active in protecting their rights and in assisting the library.

¶7. (U) In addition, the copyright law, despite being TRIPS-consistent, still suffers from various loopholes that need to be closed. Finally, Jordan has yet to ACCEDE to the WCT, the WPPT and some ARTICLES of the Paris convention dealing with patent protection and geographical indicators, though it has committed to do so under the terms of the U.S.-Jordan FTA. In an important step forward, a local legal firm specializing in IPR protection wrote a position paper, for the private sector on their IPR needs. The firm offered its assistance to the group in lobbying the GOJ to take more stringent IPR measures in advance of the FTA joint commission meeting.

----- Operational hurdles -----

¶8. (U) With a staff of just six copyright enforcement officers throughout Jordan, the National Library remains clearly short on qualified manpower. The prime minister recently approved a special 30 percent basic salary raise for the over-worked enforcement staff in order to make salaries more competitive with the private sector. Still, library salaries are as low as USD 150 per month. USAID, through its AMIR program has donated six computers to the National Library. However, the National Library remains in acute need of new cars, digital cameras, photocopiers, and facilities. Its staff needs more training, new pc's and software, mobile phones, English language training, and incentives for working late and irregular hours. It also needs to develop a database of licensees in order to contact them immediately to sue when a case is referred to the courts. Finally, the role of the National Library and its positive impact needs to be publicized and linked in the minds of Jordanians to the potential impact on Jordan's economy.

----- The Judiciary and IPR -----

¶9. (U) Whereas enforcement is making progress, the judiciary remains the weak link. Jordanian judges need more education on and exposure to IPR in order to effectively enforce the legislation in place. With the help of the judicial council, training courses for judges on IPR and e-commerce are being conducted with the support of the Jordanian bar association, and the ministries of culture and industry and trade.

¶10. (SBU) According to Talhouni, judges need to be quicker, more aware and understanding of IPR issues, and harsher in their sentences. Many of them, he said, sympathize with the local shop owners and see no reason to protect the rights of distant foreigners, not realizing the long-term implications of this on Jordan's own nascent intellectual life. IPR-related crimes are supposed to be fined anywhere between JD 1,000 - 3,000, which is too low by international standards and could not be considered as a sufficient deterrent. Jordan committed to increase to JD 6,000 under the Jordan-us FTA. However, some judges consider that too high and so give far more lenient sentences. The solution, said Talhouni, would be awareness on how IPR infringement also hurts Jordanians. Testimony by Jordanian victims of piracy could change the judges' mindset and make it more favorable towards IPR implementation.

¶11. (SBU) The Library and Higher Judicial Council have been working with local IP organizations and WIPO to raise judicial awareness through seminars and other activities. The embassy's public affairs section has also been active in promoting IP awareness, including through a series of well-attended digital videoconferences. But much more work remains to be done to bring the overworked judiciary up to speed.

¶12. (SBU) A related complication is the unwillingness of victims of IPR infringement, whether the licensees or the copyright holders (such as some Jordanian writers in a recent case) to file a case against the perpetrators for fear of losing business or for lack of conviction. Many of them would complain loudly about their problems and issues whenever given the chance, however, they would shy away from taking any

action themselves and would like the government or even post to do their bidding for them. This largely stems from the generally non-confrontational nature of people and business in Jordan.

COMMENT

13. (SBU) Jordan's record on IPR enforcement over the past six months remains mixed. Greater ENFORCEMENT and more raids are taking place. However, without closing the loopholes in the IPR laws, changing the mindset of the judiciary and convincing the victims of IPR crimes to file their own civil suits, IPR enforcement in Jordan will be hard-pressed to keep up with Jordan's commitments under WTO and the Jordan-U.S. FTA. Allocating special IPR judges and training them while changing the image of IPR crimes by highlighting their negative effects on Jordanians would be steps in the right direction. Finally, greater coordination between the National Library, the police force and the customs department could help making IPR cases a lot more difficult to dismiss.

14. (SBU) We noted with interest ref b announcement of USPTO's planned conference on specialized IPR courts. This is just the sort of awareness-raising Jordan's civil court judges need to help their resources match their willingness to make progress on strengthening IPR enforcement. We are working with Talhouni to identify two English speaking judges could benefit from this conference. GNEHM